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DEPARTMENT OF STATE REVENUE

**Information Bulletin #29**  
**Sales Tax**  
**January 2012**  
**(Replaces Information Bulletin #29 Dated August 2008)**

**DISCLAIMER:** Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the statutes, rules, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current statute and procedures related to the subject matter covered herein.

**SUBJECT:** Sales of Food

**DIGEST:** Adds specific items to the lists of items that are taxable or exempt grocery items. The items conform to the listing approved by the Streamlined Sales Tax Governing Board.

**EFFECTIVE DATE:** January 1, 2012

**REFERENCES:** [IC 6-2.5-1-11](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-12](#); [IC 6-2.5-1-16](#); [IC 6-2.5-1-20](#); [IC 6-2.5-1-26](#); [IC 6-2.5-1-28](#); [IC 6-2.5-4-15](#); [IC 6-2.5-5-20](#); [IC 6-2.5-5-21](#); [IC 6-2.5-5-21.5](#); [IC 6-2.5-5-22](#); [IC 6-2.5-5-35](#); [IC 6-2.5-8-1](#)

## INTRODUCTION

Generally, the sale of food and food ingredients for human consumption is exempt from Indiana sales tax. Primarily, the exemption is limited to the sale of food and food ingredients commonly referred to as "grocery" food. The purpose of this bulletin is to assist Indiana retailers in the proper application of this exemption.

A number of items sold by grocery stores, supermarkets, and similar type businesses are classified in this bulletin under the headings "Non-taxable Food Items" and "Taxable Grocery Items." These examples are for illustrative purposes and are not intended to be all-inclusive.

### I. Non-taxable Food Items

Food is defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value. The term does not include tobacco, alcoholic beverages, candy, dietary supplements, or soft drinks.

The Indiana sales tax does not apply to the sale of food and food ingredients listed below if sold unheated and without eating utensils provided by the seller:

- Baby food
- Bakery items (including bagels, bars, biscuits, bread, buns, cakes, cookies, croissants, Danish, donuts, muffins, pastries, pies, rolls, tarts, tortes, and tortillas)
- Baking chocolate (whether liquid, powder, or solid)
- Baking soda or other forms of leavening agents
- BBQ potato chips
- BBQ sunflower seeds
- Beverages containing at least 50% fruit or vegetable juice or containing milk, milk products, or milk substitutes
- Broths and bouillons (whether liquid, instant, freeze dried, or cubes)
- Canned fruits and vegetables
- Cereal and cereal products
- Cocoa
- Coconut (whether whole, shredded, processed, or raw)
- Coffee and coffee substitutes (beans, grounds, freeze dried, bags, and instant only)
- Condiments
- Cotton candy not prepared by seller
- Deli items when sold unheated by weight or volume as a single item
- Deli trays that contain only otherwise exempt items
- Eggs and egg products or substitutes

- Extracts and flavorings intended as cooking ingredients
- Fish and fish products (including all other forms of seafood)
- Flour (including barley, buckwheat, corn, rice, rye, soy, wheat, whole wheat, or other forms of milled grains or nuts)
- Food coloring
- Food sold by a seller whose primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries)
- Food sold by weight or volume as a single item
- Fritos Honey BBQ Flavor Twists
- Frosting in containers
- Frozen juice bars
- Fruit and fruit products (whether fresh, frozen, canned, or dehydrated); this excludes items on salad bars
- Gelatins (whether powdered or prepared)
- Gluten-free non-candy products
- Honey
- Ice
- Ice cream (including toppings and novelties)
- Icing in tubes
- Jams and jellies (including marmalades and preserves)
- Jell-O pudding
- Ketchup
- Kit Kat bars
- Lard
- Licorice w/flour
- Lightly salted rice cakes
- Marshmallow crème
- Meat and meat products (whether fresh, frozen, cured, canned, or dehydrated)
- Milk and milk products
- Mustard
- Nuts (including salted, but not chocolate- or candy-coated nuts)
- Oleomargarine
- Olive oil
- Peanut butter
- Pepper
- Pickles
- Popsicles
- Powdered drink mixes (including sweetened)
- Pudding
- Relishes
- Salad dressings and mixes
- Salt
- Sandwich spreads
- Sauces
- Sherbets and sorbets
- Shortenings
- Snack chips and pieces (including corn chips, pig skins, potato chips, pretzels, and trail mixes)
- Soups
- Spices
- Sugar, sugar products, and sugar substitutes
- Syrups (including molasses and dietetic syrups and similar products)
- Tea (bags, leaves, or instant only)
- Trail mix
- Twix bars
- Unpopped popcorn (regular, caramel, or kettle)
- Vegetable oils
- Vegetables and vegetable products (whether fresh, frozen, canned, or dehydrated); this excludes items on salad bars
- Water

## **II. Taxable Grocery Items and Candy**

The following grocery items and candy are subject to Indiana sales tax:

- Alcoholic beverages
- Almond bark
- Beer nuts party mix
- Breath mints
- Butterscotch chips
- Cake decorations
- Candy and confections
- Caramel apples
- Cereal bars w/o flour
- Chewing gum
- Chocolate chips
- Chocolate-covered nuts
- Chocolate-covered potato chips
- Cocktail mixes (dry or liquid)
- Cooking utensils
- Cracker Jacks
- Dietary supplements
- Dried fruit w/ sweetener
- Flaked coconut w/sweetener
- Fruit Roll-ups
- Gluten-free candy products
- Heath Bar bits
- Honey-roasted peanuts
- Licorice w/o flour
- Liver oils
- Lozenges
- Marshmallows
- Nestle Crunch bars
- Over-the-counter medicines
- Paper products
- Pet food and supplies
- Pixie Stix
- Popped kettle and caramel corns
- Soap and soap products
- Soft drinks
- Tobacco and tobacco products
- Tonics
- Toothpaste and mouthwash
- Vending machine sales
- Vitamins

Food sold in a heated state or heated by the seller is taxable.

Two or more food ingredients mixed or combined by the seller for sale as a single item are taxable (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food-borne illness).

Food that is sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws is taxable.

#### **A. Candy**

Candy is defined as preparations of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The fact that these preparations contain ingredients that, if purchased separately, are considered exempt does not exempt these preparations. The term does not include any preparation that contains flour listed on the label or any preparation that requires refrigeration.

Baking chocolate and similar products that are intended for use in cooking will be considered exempt food within the meaning of this information bulletin. The method used in packaging, distributing, and displaying the

product, including the kind and size of container used, will be considered in determining the primary use for which it is sold.

## **B. Soft Drinks**

Soft drinks are defined as nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent vegetable or fruit juice by volume.

## **C. Dietary Supplements**

Sales of dietary supplements are subject to Indiana sales tax. The term dietary supplements means any product other than tobacco that:

- (1) Is intended to supplement the diet;
- (2) Contains one or more of the following ingredients:
  - (a) Vitamins
  - (b) Minerals
  - (c) Herbs or other botanicals
  - (d) Amino acids
  - (e) A dietary substance for use by humans to increase the total dietary intake
  - (f) Concentrates, metabolites, constituents, extracts, or a combination of any of the above ingredients
- (3) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in the above form, is not represented as a conventional food and is not represented for use as a sole item of a meal or of the diet;
- (4) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required under 21 CFR 101.36.

Sales of food prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the sales tax if dispensed by a registered pharmacist or sold by a licensed physician.

## **D. Prepared Food**

(1) All food sold through a vending machine is subject to sales tax regardless of the type of food sold. The fact that the item qualifies as exempt food if sold in another manner does not make the purchase exempt if sold through a vending machine.

(2) All food items sold with eating utensils provided by the seller are taxable. Food shall be considered to be sold with eating utensils provided by the seller when the food is intended for consumption with the utensils provided. Taxable food therefore includes all food sold by an eating establishment that sells meals, sandwiches, or other food for consumption on or off the premises. Additionally, taxable food includes self-service food such as salad bars or drink islands. The presence of self-service utensils in a facility does not make otherwise exempt food taxable unless it is intended that the food be consumed with those utensils. Further, items provided solely pursuant to sanitary statutes or regulations and not for purposes of consumption do not qualify as utensils.

(3) All food items sold in a heated state are taxable. Food is also taxable if it was heated by the seller and is ready to eat without further cooking by the purchaser.

(4) Where two or more food ingredients are mixed or combined by the seller and then sold as a single food item, this item is taxable unless:

- (a) The item is both sold in an unheated state by weight or volume as a single item and is sold without eating utensils, (e.g., potato salad);
- (b) The item sold represents food that is only cut, repackaged, or pasteurized by the seller (e.g., vegetable trays); or
- (c) The item sold contains raw animal foods that require cooking.

(5) Bakery items are not taxable unless they are

- (a) Sold through a vending machine;
- (b) Sold with eating utensils provided by the seller; or
- (c) Sold in a heated state.

- (6) Food items sold by a seller whose proper primary NAICS classification is 311 food manufacturing (except subsector 3118, bakeries) are not taxable unless they are
- (a) Sold through a vending machine;
  - (b) Sold with eating utensils provided by the seller; or
  - (c) Sold in a heated state.

#### **E. Unitary Transactions**

When a taxable item is sold with a non-taxable food item where the food item is less than 50 percent of the total price, the entire purchase amount is subject to sales tax. If such items are separately priced and charged on the receipt, only the amount charged for the taxable item is subject to sales tax.

#### **III. Coupons, Redemption Certificates, and Bottle Deposits**

Coupons or redemption certificates received by the seller as payment or partial payment of merchandise are considered as cash if such coupons are redeemable to the seller and were not extended by the seller.

Charges for bottle deposits are not subject to sales tax and should be removed from the total on which sales tax is computed. The refunds of bottle deposits are not deductible when computing taxable receipts.

#### **IV. Purchases by Retailers**

Purchases by the retailer of merchandise for resale and of material for nonreturnable packaging of merchandise sold is exempt from sales tax.

Gifts and premiums given by a retailer are not purchases for resale, and such items are subject to the sales tax when purchased by the retailer. The retailer cannot purchase cash registers, equipment-cleaning supplies, cash register tapes, sales tickets, and other similar items exempt because the retailer is the final consumer of these items. The retail merchant must pay sales tax on all such items. Sales of merchandise to employees are subject to sales tax on the full final sales price.

#### **V. Registration and Record Keeping Requirements**

All grocers and other general merchandise retailers are required to file an application for a registered retail merchant's certificate for each location. Upon application with the Department of Revenue and the payment of a \$25 fee, a certificate will be issued that must be displayed on the premises at all times.

The certificate is valid for two years from the date of issue and will be renewed automatically if the retail merchant is not delinquent in remitting sales or withholding taxes. If the retail merchant's certificate is automatically renewed, there is no fee for the renewal.

If the retail merchant is delinquent in remitting sales or withholding taxes, the retail merchant will be notified by the Department at least 60 days before the expiration of the retail merchant's certificate.

Indiana retail merchants are required to keep adequate books and records for both taxable and nontaxable sales for a period of three years, plus the current year.

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John Eckart  
Commissioner

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